

July 2nd, 2007

Commission's Secretary

Marlene H. Dortch

Office of the Secretary

Federal Communications Commission

445 12th Street, SW

Room TW-A325

Washington, DC 20554

Re: WC Docket No. 06-210

CCB/CPD 96-20

EX PARTE COMMENTS REGARDING CCI et al vs. AT&T

Ms Shetler:

I, Joseph Kearney, make these comments voluntarily and without compensation to assist the Federal Communications Commission (FCC) in its consideration of the Declaratory Rulings' request of Petitioners in the above referenced proceeding.

With this filing I support Petitioners' opposition to AT&T's motion for sanctions against petitioners and Mr. Inga; and I also support petitioners' motion for sanctions against AT&T.

I am hopeful my comments will be enlightening to the FCC on this matter, as they are the viewpoints of someone who was very familiar with AT&T's tariffs and

procedures as both an AT&T employee and as an aggregator of CSTPII / RVPP toll free services myself. Since Mr. Inga has already done a tremendous job of addressing each AT&T assertion I will be brief.

My AT&T Back Ground

I had been employed in the telecommunications industry for over twenty years, more than ten of which were spent as an employee of both Bell of Pennsylvania and AT&T.

I have made two previous comments within this proceeding:

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Mailing Address: 135 Forest Rd Mountain Top, PA 18707 -1316 [RECONSIDERATION](#)

Within each of the above public comments I stressed to the Commission that as an AT&T sales manager and aggregator, revenue commitments and their attached shortfall and termination obligations never transferred on a traffic transfer.

Petitioners refer to it as a “traffic only” transfer but I will refer to it as a traffic transfer; it is the exact same type of transaction.

My previous filings have stressed that the reason why AT&T can not show any evidence of revenue commitments transferring on a traffic transfer is because no evidence exists. I saw the evidence presented by petitioners in which AT&T's counsel, during oral argument, informed Judge Politan that AT&T has performed thousands of traffic transfers. Why then can't AT&T show a few examples of revenue commitments transferring on traffic transfers? The answer is, simply, that no evidence exists. It's not likely that AT&T doesn't have these AT&T TSA contracts anymore. Did they just forget where they filed them? AT&T has a vast electronic library. AT&T knows that plan obligations do not transfer unless the plan transfers, heck we all as AT&T sales people knew that, and therefore there is no possible evidence to find that would be favorable to AT&T's theory. It's like they were telling us employee's one thing and now, for whatever reason, telling the FCC and Courts a different tale ... unbelievable!

Now that the evidence is so apparent against AT&T's all obligation theory, AT&T now attempts to seek sanctions and recommends the sanctions should be dismissing the case ... wow!

What Evidence Does AT&T Offer the FCC to Substantiate Such a Motion?

AT&T simply attempts to make something out of nothing as AT&T attacks Mr. Inga personally as it attacks IRS agents. AT&T alleged that because Mr. Inga was a tax specialist 20 years ago that he "presumably knew people at the IRS." The clear connotation is that Mr Inga was able to get the IRS to do something that others

couldn't because he had an "inside friend." I guess if they knew I was once married to an IRS employee they'd throw that in their pot of obfuscation also.

For AT&T to file a motion to dismiss the case based upon what AT&T actually concedes are its presumptions, is something that the FCC must strongly address. It is more than appropriate that AT&T's request to dismiss the case in favor of AT&T, should, due to AT&T's filing of presumptions have the reverse done and rule in favor of petitioners.

This is particularly appropriate due to the fact that AT&T itself initiated an IRS investigation into the IRS letters.

Petitioners make an excellent point - AT&T, at the time of its June 18, 2007 filing either:

A) Already knew that Tips was cleared of all AT&T's allegations and AT&T filed anyway. OR B) AT&T filed with the FCC before getting word back from the IRS on the outcome of the IRS investigation that AT&T initiated.

Either way AT&T is clearly in violation of having submitted a frivolous filing, as AT&T conceded its motion was based upon its presumptions. AT&T made a big deal over nothing regarding the first IRS letter that had already been voluntarily withdrawn by Tips months before AT&T filed its June 18th 2007 motion for sanctions.

AT&T itself cites the law: *In re Litigation Trust Recovery*, 17 FCC Rcd 21852, 21857-58 (2002). Sanctions should be imposed on filings where "there is no good ground to support it," and those "filed without any effort to ascertain or review the underlying facts." Petitioners' evidence clearly mandates the FCC to take drastic measures against AT&T for its unconscionable allegations.

Other Alleged Misconduct

Besides the IRS letters for Tips, AT&T actually asserts other complete nonsense to assert misconduct. The following AT&T allegation of "misconduct" takes the award for frivolity:

AT&T speculates that Mr. Inga, (based up AT&T's "presumption" of Mr Inga's writing style) wrote a brief and somehow AT&T states it was misconduct for him to have his counsel final edit and sign the brief before submitting it to the FCC. This is misconduct? Have these guys actually finished law school? Or are they just playing games on everyone else's time and money?

And how about this one, I had to shake my head in disbelief when AT&T cited as misconduct petitioners' request to reconsider the FCC's Jan 12th 2007 Order. AT&T raised this issue now ... after the petitioners dropped the reconsideration request months ago. Since when are there no rights to appeal FCC Orders?

What I found the most disturbing is that these alleged misconducts that AT&T raised, if they actually were misconduct, should have been raised at the time of the

alleged misconduct. It certainly couldn't be that egregious if AT&T waited many months afterwards to bring the alleged misconduct up. I am no attorney but I believe there must be a law which states that AT&T would have to raise misconduct allegations in a timely fashion. Obviously these alleged misconducts could not have been that bad at all if AT&T did not make them an issue until way after they allegedly occurred. In reality, knowing how AT&T operates, there was no misconduct at all on the part of petitioners, Tips, or Mr. Inga. Seems like they're scrambling ... soon I suppose we'll be seeing their "Hail Mary" pass. Will it be greeted with an "Immaculate Reception"? Not if justice and common sense prevail.

AT&T's Tries to Change The Focus of the Case

The FCC should also take a good hard look at petitioners' comments in which petitioners expose how AT&T attempted to change what was originally before the NJ District Court in 1995 and 1996 and the FCC in 2003.

Petitioners conclusively demonstrated how AT&T attempted to change history as petitioners evidenced how AT&T quoted Judge Politan's Order and spun it. AT&T wanted the FCC to believe that the issue was whether or not "plan obligations" must transfer on a "traffic transfer". Petitioners' citing of Judge Politan's Order has to do with, as Judge Politan stated, Tr. 8179.

Tr. 8179 is an AT&T concession that "plan obligations" do not transfer on "traffic transfers". That is why AT&T's Tr. 8179 filing mandated that the entire plan must transfer not just the plan obligations on a traffic transfer.

Petitioners hit it right on the head when they made the point that AT&T's defenses before the Third Circuit Court were "conspicuously absent" from AT&T's timeline. Petitioners clearly showed with citations from the record the AT&T's concessions that "plan obligations" do not transfer on "traffic transfers".

Summary

Clearly the only party that has engaged in misconduct is AT&T. It is evident that AT&T has attempted to make a last ditch effort to have the case dismissed because AT&T recognizes the evidence is totally overwhelming against AT&T.

I respectfully request that the Commission deny AT&T's request for sanctions and instead order that sanctions be imposed against AT&T.

Respectfully submitted,

Joseph J Kearney

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